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By Kristi Kellkin

PATENT

IN THE UNITED STATE PATENT AND TRADEMARK OFFICE

In re application of:

Greg Brannstrom

Serial No. 10/616,312

Filed: 07/08/2003

For: Tomato Harveste

Examiner: Alicia M. Torres

Art Unit: 3671

DECLARATION OF GREG BRANNSTROM

37 CFR §1.132

1. I, Greg Brannstrom, declare as follows, under penalty of perjury.

2. I have been building agricultural harvesting machinery since 1977. Prior to 1977, I attended the College of Hvilan, Sweden. I attended Hvilan for approximately four years and obtained various agriculturally related certificates, including certificates in agronomy and agricultural machinery and mechanics. Part of the training at Hvilan included working as an apprentice in the various fields of study. This training included an apprenticeship of eight to nine months in agricultural machinery with a company called A.M. Cani. I also worked as an apprentice for the Swedish Institute of Agricultural and Environmental Engineering ("JTI") for about a year.

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3. After moving to the United States, from 1977 to 1978 I worked for Heidrik Farms, an agricultural company, where I performed all of the maintenance on the company's tomato harvesters. From 1978 to 1979, I changed employment to Mike Beeman Farms, where I once again performed all of the maintenance on the company's tomato harvesters.

4. In 1979, I became self-employed and worked primarily as an independent contractor for Bakersfield Food Harvesters, performing all of the repairs and maintenance on that company's harvesting equipment. I became a partner at Bakersfield Food Harvesters in 1983 and continued to work there until 1985, when I started my own company which manufactures tomato harvesting machinery. I have continuously worked for my own company in manufacturing tomato harvesters since 1985 up through the present.

5. On page 5 of the Office Action received for patent application serial number 10/616,312, the Examiner makes the following statement: "It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the folding conveyor of Hobbs on the harvester of Cetrulo in order to move the conveyors to an inoperative position for storage and transportation." I have reviewed the patents cited by the Examiner, which are United States Patent No. 3,921,375 (Cetrulo) and No. 4,184,314 (Hobbs). Based upon my knowledge and experience with agricultural harvesting equipment, the combination suggested by the Examiner cannot be made for the reasons stated below. Because the combination cannot be made, the Examiner is incorrect in concluding that it would have been obvious to someone skilled in the art to include the folding conveyors of Hobbs on the harvester of Cetrulo.

6. Hobbs discloses a tri-section vine fluffer which is pulled by a hauling tractor. Col.2:19-21; 35-40. The three conveyor sections of the Hobbs device comprise a continuously horizontally disposed middle section B and two flanking outer sections, A and C, which are

pivotable relative to the middle section. Col. 1:67 – Col. 2:4. Each of conveyor sections A, B, and C have a pair of endless chains 30 and 32 to which are attached a plurality of spaced apart bars 34. Col.4:49-68. As shown in the figures of Hobbs, there are no structural features which might interfere with the pivoting of the flanking outer sections A and B.

7. Cetrulo discloses a tomato harvesting header attachment for a potato combine. The potato combine is towed by tractor 31. Col.2:17-19. As shown in Figures 2 and 3, Cetrulo's header attachment has an upper conveyor 150 in spaced relation to a lower conveyor 74. Col. 3:63-65. Upper conveyor 150 has endless belt 165. As shown in Figure 4, lower conveyor 74 has a plurality of conveyor belts 100. Cetrulo notes "the lower run of belt 165 and the upper runs of said lower conveyor 74 will move in the same direction toward the elevating conveyor 45." Col.3:63 – Col.4:14. Cetrulu states that the upper conveyor 150 and lower conveyor 74 are so spaced such that tomato vines are transferred by being sandwiched between the two conveyors: "the two conveyors, 150 and 74 by their cooperative relationship carry the vines and the tomatoes thereon upwardly to deposit the same onto the elevating conveyor 45 . . ." Therefore, conveyors 150 and 74, which are generally parallel to another, can not be separated by more than a few inches in order to so transfer the tomatoes and vines by their cooperative relationship.

8. The device of Hobbs is able to utilize right side and left side outrigger conveyors because there is no structure above either of the conveyors to prevent each outrigger from pivoting from a first position with the outriggers in the same relative position as the central conveyor B to a second position with the outriggers at approximately a right angle to the central conveyor. However, this is not true for the device of Cetrulo. The upper conveyor directly overlies the conveyors 100, thereby precluding any means of pivoting these lower conveyors as done in the device of Hobbs. In addition, in the device of Cetrulo the various

members of the framework of the combine 12 appear in Figures 1 and 2 to be directly above the tomato header attachment, presenting a further obstacle to any pivoting of the conveyors 100.

9. For these reasons, modifying the device of Cetrulo to include the folding conveyors of Hobbs as suggested by the Examiner simply cannot be made in any manner obvious to me.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application and any patents resulting therefrom. Executed in Bakersfield, California on this 15 day of October, 2004.

Greg Brannstrom